

BUSINESS & LABOREXHIBIT NO. 11
DATE 2-9-09
BILL NO. SB 287

Re: SB 287 – Consumer Health Freedom and Access Act

Dear Senator Brown,

Thanks for your question regarding how this bill stacks up against other states.

I've tried to be as complete as possible. One correction that I would like to make concerning my testimony: The genesis of the Oklahoma law was not in their constitution, but was the result of a referendum passed in 1920. I apologize for misspeaking on this issue.

What I've done is provide a summary comparing and contrasting the health freedom laws to SB 287. I've also included copies of the statutes so that you can read through them yourself.

I've also made copies of this document for the rest of the committee and staff.

I've also made a copy of the board complaint information and have attached that as well.

One point I'd like to clarify: **The Montana Health Freedom Coalition's view on licensure.** We have a wide variety of viewpoints from completely anti to very pro licensure. A statement that we could all agree on is that we do not oppose licensure if the profession wants it and if it does not infringe upon the health freedom of other professions, which means in our view that health freedom and licensure can exist side by side. Once a profession does become licensed, this bill will no longer pertain to them.

A few things that did not come out in testimony yesterday – there just wasn't time – was that some of our national supporters have licensure agendas: the American Dance Therapy Association, the American Music Association and the Certification Board for Music Therapists. The music groups see this bill as a way to allow their practitioners to practice safely and legally until their organization can pursue its licensure agenda in Montana (which won't happen for many years as they have so few members here). And finally, a group that certifies personal trainers was enthusiastic about the bill because it preserves their right to practice. Their concern is that as licensed professions "discover" the economic impact of adding preventive care to their agendas (and their broadly written practice acts are written to allow this), licensed professions will attempt to "take over" various aspects of unlicensed professions and "squeeze" the unlicensed people out. The personal trainers' group pointed out that this is beginning to happen to their profession by the physical therapists in other states.

Thanks again for your great question and I thank you and the rest of the committee for a good hearing. I appreciate the opportunity to provide further information and am happy to answer any other questions that you may have.

Yours in Health,



Deborah A. Kimmet

Cc: Senate Business Labor & Economic Affairs Committee and Staff

Legislation Enacted in Other States:

2001 California SB577 – California Complementary and Alternative health Care Practitioners

Only exempts from practicing medicine, not other professions – does not create oversight organization, does create an exemption within existing law.

It as carried by the President Pro Tempore (a Democrat) of the Senate.

A version of this model is now used by most health freedom groups and has been adapted for use as a template by the National Health Freedom Action. National groups have expanded it to include exemptions from other professions. This template was used to create Montana's bill.

1999 Minnesota Statute 146A – Minnesota Freedom of Access to Complementary and Alternative Health Care Practitioners.

This is the other main model: creates an oversight organization and more bureaucracy. A few years ago, the governor tried to eliminate the oversight organization because there were too few complaints. The legislature refused to do so. No other state has implemented this type of model – Rhode Island used much of the same language as the rest of the MN bill, but stopped short of setting up a separate office. According to Health Freedom Advocates in California, they opted not to incorporate an oversight organization based on Minnesota's experience when they developed their bill.

2005 Louisiana Revised Statutes 20-37 VI-B – Revised again in 2008.

The first version enacted only pertained to herbs, food supplements and the like.
In 2008, other unlicensed practices were added under "lifestyle modifications."

2003 – Rhode Island Statute 23-75 – Unlicensed Health Care Practices

As above, uses much language from Minnesota, but stops short of creating an oversight board.

1976 – Idaho

Idaho Exemptions to the Medical Practice Act (54-1804): "Unlicensed Practice – penalties and remedies relating to unlicensed practice" are either enacted or amended to create health freedom, which provides for prohibited acts and informed consent.

2005 – Idaho

Enacts a licensure bill for naturopaths(54-5103, 54-5106, 54-5107). As part of the provisions of that bill, it seems to further clarify state law and formalized the disclosure.

1917 – Oklahoma: law is passed to give the allopathic medical board control over "drugless healing arts"

1920 – Oklahoma: State referendum repeals the Oklahoma Law.

Due to this referendum, licensed professions are considered definitions of scope of practice laws only and do not grant any licensing board jurisdiction over any healing arts practice other than the one defined by the law for that particular healing art.

1994 – Oklahoma: allopathic medical practice acts are modernized: 59-480. Health freedom is re-affirmed.

Bills Introduced:

Texas has introduced a bill for 2009 (HB 40) – adapted from national template

Bills introduced in 2008:

Colorado (HB 1158) – adapted from national template

Louisiana (see above)

Maryland (SB 119) – adapted from national template, with simpler wording.

North Carolina (HB 1358) - - adapted from national template

Washington (SB 6886) - - adapted from national template with additional provisions

(Good language regarding what is and isn't a diagnosis)

Other states have either introduced legislation in the past and/or are currently working on introducing legislation but it hasn't happened yet. Most seem to follow the national template:

Florida (2004) - - adapted from California

Georgia (2005) – adapted from California

Hawaii (SB 739 – 2007) – adapted from California

Illinois (HB 3389 – 2007) - - adapted from national template with more detailed disclosure

Iowa (SF 478 – 2007) – it was killed as legislators turned it into a licensure bill.
Massachusetts – working on the issue not sure if any has been introduced.
Michigan (HB 5918 – 2006) – adapted from California
New Mexico (SB 18 – 2007) – does not follow any template
New York (2007 bill followed Minnesota template)
Ohio (HB 148 – 2007-2008 session)
Utah (2006) – – adapted from national template
Virginia (SB 422- 2006) – Doesn't seem to follow any template, but is simply written – pertains to natural food products only.
Wisconsin working on legislation – not sure if any has been introduced.

Other Legislation:

As I was researching this, I find another piece of legislation that might be interesting.

Washington (SB 5509 – 2007) The bill applies to only licensed providers, but if re-worded to apply to unlicensed practitioners it could address an issue that would take care of at least one of the concerns that alternative / complementary providers have.

In the event that any proof of harm to a patient is not presented and the complaint is based solely on the use of a procedure, the complaint is not in good faith.

So, it can have the effect of protecting alternative health care providers – no one can bring a complaint just because you are using a procedure that “belongs” to someone else.

Comparison of SB 287 to Laws already enacted.

Oklahoma, Louisiana, California, and Idaho have the simplest and shortest laws on the books. Rhode Island and Minnesota laws are similar in many of its provisions with Minnesota the most complicated one on the books in terms of the regulatory requirements. No other states seem to set up a separate bureaucracy to address the issue, whereas Minnesota has set up a separate office to field, investigate and adjudicate complaints. Rhode Island does not set up such a separate office. When drafting the bill, we received a template from the National Health Freedom Action. It appears to be modeled after California's law.

Some states used terminology "unlicensed alternative and complementary health care." We opted not to use that language so as to not run afoul of any definitions that might intrude upon the alternative health care board.

Oklahoma:

A referendum was enacted in 1920: practice acts re considered definitions of scope of practice laws only and do not grant any licensing board jurisdiction over any healing arts practice other than the one defined by the law for that particular healing art. Under the Oklahoma Consumer Protection Act, consumers of natural healing arts services are able to seek assistance from the OK Attorney General's Office of Consumer Protection, and are also able to sue in civil court for damages. In 1994 the allopathic medical practice acts were modernized, where MDs were allowed to offer non-traditional and/or experimental services.

How it compares to SB287: there are no prohibited acts and no disclosure required. Like **SB287** it does not establish an additional bureaucracy to enforce these provisions. Also, **SB287** is silent concerning licensed professionals performing unlicensed acts. The bill only pertains to unlicensed practice. Further, when we put specific language in the bill to ensure that boards had control over their own licensees, legislative services removed that language.

Idaho:

Health Freedom legislation was enacted in two parts:

In 1976 as part of the medical practice act and in 2005 as part of a bill licensing naturopaths. It appears that both are in effect.

How it compares to SB287:

1. In the medical practice act, under a section entitled "unlicensed practice – penalties and remedies relating to unlicensed practice", it allows practitioners to engage in specific activities included in the practice of medicine – **SB287** exempts from all practice acts.
2. Listed in the medical practice act is a mixture of prohibited acts and permitted acts – **SB287** only lists prohibited acts.

What/Who is permitted:

- a) a person engaged in good faith in the practice of the religious tenets of any church or religious beliefs. **SB287:** does not contain this language as something similar is included in the medical practice act statutes.
- b) a person administering a remedy, diagnostic procedure or advice as directed by a physician. **SB287:** does not specifically do this. Practitioners are actually prohibited from diagnosing (so no diagnostic procedures), even at the request of a physician.
- c) A person who is administering a treatment or provides advice regarding the human body and its functions that: (**SB287: allows treatment and providing advice.**)
 - i. uses natural elements such as air, heat, water and light **SB287: allows this too.**
 - ii. Only uses class I or class II nonprescription, approved, medical devices as defined in the federal food drug and cosmetic act
SB287: Prohibited acts include: prescribes, administers, or dispenses, a device that requires a prescription for use,
 - iii. Only uses vitamins, minerals herbs, natural food products and their extracts, and nutritional supplements **SB287: allows this too.**

Prohibited Acts:

- a) Does not use legend drugs or prescription drugs. **SB287:** prescribes, administers, or dispenses a prescription drug... or a controlled substance.

b) Does not perform surgery. **SB287**: does the same.

c) **SB287 exceeds these requirements by also prohibiting:**

Any procedure puncturing the skin except for fingerprick drawing of blood for screening purposes, Prescribing/administering x-rays, making a conventional medical disease diagnosis, directing or instructing a person to discontinue medical care/treatment prescribed by a licensed provider, performing high-velocity, low-amplitude thrust to a joint (like chiropractic), **AND for causing harm or creating/causing a risk of harm – no such language is in the statute that I could find (unless in my haste I missed it),**

Disclosure Required: Idaho does requires informed consent which includes an overview of the provider's education and states that the person is not licensed or is an MD or DO. **SB287: Disclosure is required that is more detailed and contains specific information concerning the position of the state concerning such practitioners. Further discussed under California section. In short: SB287 exceeds these requirements.**
What is not in MN but is in SB287: a cultural exemption for traditional cultural healers recognized by their community from providing the written disclosure. Also, reasonable accommodations for those who cannot read, are impaired or do not speak the same language as the practitioner.

3. When the naturopathic licensing bill was enacted, it seems to further clarify the law and allowed for persons not licensed by their bill the ability to provide natural health care services per the statute. It formalized the disclosure by including the practitioner's contact information and outlined when the disclosure is done and that it must be repeated when the information on the disclosure changes. **SB287** does the same. Further, it exempted some practitioners – making them subject solely to the medical practice act provisions.
4. Like **SB287** it does not establish an additional bureaucracy to enforce these provisions. I did not find language outlining exactly how enforcement occurs – as a guess, probably in the same manner as complaints for other professions are handled.

Louisiana:

In 2005, health freedom was enacted but in limited fashion – mainly concerning food, dietary supplements and homeopathic remedies. In 2008 it was expanded to include other providers. They do this by designating these services "lifestyle modifications."

How it compares to SB287:

1. **Disclosure Required:** written disclosure is required that is similar to **SB287**.
What's in this bill that is not in SB287: a statement that any food or dietary supplements being recommended are not medically prescribed drugs.
What's in SB287 that is not in LA law: contains specific information concerning the position of the state concerning such practitioners. a cultural exemption for traditional cultural healers recognized by their community from providing the written disclosure. Also, reasonable accommodations for those who cannot read, are impaired or do not speak the same language as the practitioner.
2. **Prohibited Acts: Similar to SB287**
 - a. **SB287 exceeds these requirements by also prohibiting:**
Any procedure puncturing the skin except for fingerprick drawing of blood for screening purposes, making a conventional medical disease diagnosis, **AND for causing harm or creating/causing a risk of harm – no such language is in the statute that I could find.**
 - b. **LA provisions are not stronger than SB287, except the additional disclosure item as listed above.**
3. **Enforcement:** The attorney general or local DA mails a certified letter to providers that they must begin disclosing information to their clients. Like **SB287** it does not establish an additional bureaucracy to enforce these provisions. I did not find language outlining exactly how enforcement occurs – as a guess, probably in the same manner as complaints for other professions are handled.

California

Enacted in 2001. It only exempts for the practice of medicine. While many states are using a similar model to this, other states that are attempting to exempt other practices. Montana is doing the same. There is language that the Act does not affect the scope of practice of physicians and surgeons – we had similar language (but generalized to affect the scope of any profession), but legislative services took it out as being redundant. There is also language that makes clear that a person can seek relief for negligence by a practitioner. We did not put that language in SB287 as we feel that is not an issue: it is not prohibited by the bill, so that language does not need to be in the bill.

Prohibited Acts:

1. Conducts surgery or any other procedure on a person that punctures the skin or harmfully invades the body. **SB287: contains the portion that is underlined and includes** an exception for fingerpricking drawing of blood for screening purposes.
2. Administers or prescribes X-ray radiation **SB287 is the same.**
3. Prescribes or administers legend drugs or controlled substances to another person **SB287: legend drug was originally submitted to legislative services**, the language settled upon was prescription drug. Also this language did not include any kind of devices. **We added language to include devices that require a prescription for use, thus making consumer protection stronger in this section.**
4. Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner. **SB287 has expanded this language** to include the discontinuance of ANY medical care or treatment, **thus making consumer protection stronger in this section.**
5. Willfully diagnoses and treats a physical or mental condition of any person under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness or death. **SB287 is very much the same:** According to legislative services, Montana uses “knowingly and purposely” instead of “Willfully.” The only other language change was to insert the words “imminent or discernable” before the word “risk.” This is the amended version that replaces what is originally in the bill. We received so many complaints on the original language that we toughened the language – we were told by our national advisors that the CA language is about the most restrictive. We previously had added the words “imminent and discernable” to qualify the kind of risk to ensure that frivolous claims were not brought forward. We also changed the “and” to “or” when we received the complaint that no cumulative harm could be brought forward. In our view if it is cumulative, then it should be discernable. We think that is fair. **Later on in the bill we clarify that seeking out unlicensed health care is not evidence of risk of harm.** Both Rhode Island and Minnesota have a provision with the same intent.
6. Sets fractures. **SB287: This provision is not in the bill out of deference to Native American bonesetters** who are trained by their community to provide this competency. We believe that if anyone else performs this act, they are doing so outside of their training and should be sanctioned. We know of no other alternative health care practitioner trained to provide this skill. If this needs to be added back in, we respectfully ask that an exemption for traditional cultural healers recognized by their community also be added to the wording.
7. Treats lacerations or abrasions through electrotherapy. **SB287: does not contain this wording and neither does any other enacted law.**
8. hold out states, indicates, advertises or implies to a client or prospective client that he or she is a physician a surgeon or a physician and surgeon. **SB287 is more general. Since the bill concerns all licensed practitioners, we say that we are not licensed by the state instead.** A person who advertises any services that are not unlawful under [sections under medical practice act] must put in the ad they are not licensed by the state. **SB287 does not contain this provision, we think the disclosure is enough.**

What prohibited acts are in SB287 and not in CA bill:

- a) **provide a conventional medical disease diagnosis.** We thought that the language in #5 above would address the diagnosing issue. We received so many complaints on this that we decided to make it crystal clear that we could not diagnose in the manner and in the way that doctors do. So **this provision adds more consumer protection.** However, we added language to clarify what is meant by a diagnosis. It is not defined in Montana and there were concerns we were hearing in other states that diagnosing was being interpreted

very broadly and in a way that was interfering with the practitioner's right to free speech to educate their clients and their ability to interact with the medical field.

- b) **Performs a high-velocity, low-amplitude thrust to a joint (like chiropractic).** We put it in for good consumer protection. Later, we revised our original language eliminating references to chiropractic which makes this an **even stronger consumer protection:** other professions besides chiropractors do these kinds of manipulations: PTs and osteopaths (DO), and we do not want to impede their ability to sanction practitioners.

Disclosure Required:

1. disclose in writing in a plainly worded statement
 - a) That he or she is not a licensed physician **SB287:** not in the bill, general language in c) below is used.
 - b) That the treatment is alternative or complementary to healing arts services licensed by the state. **SB287 does not say that, but see our provision "what's in SB287 that is not in CA."**
 - c) That the services to be provided are not licensed by the state. **SB287 contains a similar provision**
 - d) The nature of the services to be provided **SB287 contains a similar provision**
 - e) The theory of the treatment upon which the services are based **SB287 contains a similar provision**
 - f) His or her educational training experience and other qualifications regarding the services to be provided. **SB287 has similar language. Note, we removed the phrase "if any" to address the issue raised.**
2. obtain a written acknowledgement which is
 - i. maintained for 3 years **SB287:** the national template says 2 years, so we went with that. In response to a suggestion by the Alternative Health Care Board we changed the language to read "2 years after the last client contact." **This change makes for a stronger consumer protection aspect.**
 - ii. and in a language the client understands **SB287:** has a provision to make reasonable accommodations for anyone who cannot read, has impaired communications skills or does not read or speak the same language as the provider. **This adds a stronger consumer protection aspect.**
 - iii. A copy of the acknowledgement is given to the client. **SB287 contains a similar provision**
- g) **What's in SB287 that is not in CA:**
 - i. **That the practitioner must "re-do" the disclosure with their clients any time the information changes, thus adding to consumer protection.**
 - ii. **To further strengthen the consumer's protection, we added an amendment (on our own) that must be part of the disclosure given to the client. It states very clearly that the**
 - (1) state has no adopted educational or training standards (the person is already required to state that they are not licensed as part of the disclosure
 - (2) the disclosure is for informational purposes only,
 - (3) under Montana law, unlicensed people cannot diagnose or tell someone to stop their treatment
 - (4) to further make it clear to the consumer that they do have the right to get a diagnosis from someone who is licensed any time they want to.
 - iii. To be more sensitive to cultural issues, we added an exemption that allows traditional cultural healers – recognized by their community – to be protected under the provisions of the law, but not be bound to do the disclosure. This also means that if someone does not have that recognition, that they would have to do the disclosure to meet the provisions of the law.

Minnesota:

Passed in 1999 (you received the 2006 version). This bill regulates unlicensed practitioners, and those licensed practitioners who practice alternative complementary health care. Minnesota has a "less

customary approach" section: "the fact that a complementary and alternative health care practice may be a less customary approach to health care shall not constitute the basis of a disciplinary action per se." It is not really an exemption bill. It creates an unlicensed practice and sets many duties and requirements for practitioners to meet in order to not violate the unlicensed practice act that contains its own penalties.

How it compares to SB287:

1. **SB287 regulates only unlicensed practitioners. This bill does not regulate or affect licensed professions. Our concern is that those kinds of provisions would interfere with a board's ability to regulate their own licensees. SB287 does not do this.**
2. The Minnesota bill also creates the "Office of Unlicensed Complementary and Alternative Health Care Practice. This office handles complaints (investigations & adjudication). Provisions also require professional associations, insurers (providers of liability insurance), the courts, and the practitioner themselves to report any disciplinary actions – revocation, termination or other actions be reported to the office. It also requires practitioners who are NOT under investigation to cooperate with the office when an investigation is initiated against someone else. The office is funded by the penalties and fees imposed on practitioners in violation. It also outlines process and procedures for carrying out investigations and handling of complaints including disciplinary options and forcing the practitioner to have a physical or mental examination or chemical dependency evaluation. **SB287:** Utilizes the current system of complaints and how they are investigated and adjudicated. Creates no additional bureaucracy and the provisions of Chapter 1 & 2 of Title 37 apply.
3. **Prohibited Acts:** these are found in two places: in the definition of unlicensed health care practitioners and in a prohibited acts section.
In the definition: "Unlicensed health care practices do not include:" List is similar to SB287 prohibited acts. Additions: setting fractures, any practice included in the practice of dentistry, the use of medical devices, and practices under 147.09 clause (11) – a Christian Scientist - and 148.271 clause (5) – caring for the sick in a nursing home - and there is no exception for fingerpricking.
the Minnesota law enumerates many prohibited acts (they seem to somewhat similar to what's in Chapter 1 of Title 37:
 - a. Conviction of a crime reasonably related to alternative and complementary health care.
 - b. Conviction of any crime against a person
 - c. Failure to self-report
 - d. Engage in sexual contact with a client or former client with 2 years after the end of treatment (note: this is longer than the licensed professionals – including psychologists – are subject too).
 - e. False, misleading, deceptive advertising or conduct that is likely to deceive or defraud the public – **SB287 has a similar provision.**
 - f. "Harm the public or demonstrate a willful or careless disregard for the health, welfare or safety to any client's life, health or safety, in any of which cases, proof of actual injury need not be established" also the "inability to engage in ... practices with reasonable safety to ... clients."
SB287: "knowingly and purposely diagnoses and treats a physical or mental health condition of a client under circumstances or conditions that cause or create an imminent or discernable risk of significant bodily harm, serious physical or mental illness or death."
 - g. Failure to supply a client with a copy of the bill of rights. **SB287 has a similar provision**And on and on and on.... See Section 146A. prohibited conduct.
What is not in MN bill: there are no provisions prohibiting
Any procedure puncturing the skin except for fingerprick drawing of blood for screening purposes,
Prescribing/administering x-rays, use of devices that require a prescription for use, performing high-velocity, low-amplitude thrust to a joint (like chiropractic)

4. **Disclosure Required: Calls it a health care client bill of rights.**

Contains all of the provisions that are in SB287. Includes additional information; that clients have the right to file a complaint and where they can file a complaint, the practitioner's fees, insurance available, and payment policies, that the client has a right to reasonable notice of changes in service or charges, that the client has the right to information concerning treatment plans and duration of service, a statement that the client may expect courteous treatment and be free from verbal, physical or sexual abuse, confidentiality provisions, a statement where they may receive these services elsewhere and choose freely among

practitioners, and if there is a change in practitioners, a smooth transition, a statement that the client may refuse services, and no practitioner retaliation toward the client.

What is not in MN but is in SB287: a cultural exemption for traditional cultural healers recognized by their community from providing the written disclosure. Also, reasonable accommodations for those who cannot read.

Rhode Island:

Enacted after Minnesota (in 2003). Has elements of Minnesota, but does not create separate office. Fees and penalties assessed on the practitioner pay for the program. Has specific language to ensure boards have jurisdiction over licensees who are practicing unlicensed practices. (Note: **SB287**: while we had language in the original draft to this effect, Legislative Services took it out as being unnecessary). Rhode Island outlines disciplinary actions including the right to force the practitioner to get a mental or physical examination or chemical dependency evaluation. Like Minnesota, Rhode Island has a "less customary approach" section: "the fact that a health care practice may be a less customary approach to health care shall not constitute the basis of a disciplinary action per se."

It is not really an exemption bill. It creates an unlicensed practice and sets many duties and requirements for practitioners to meet in order to not violate the unlicensed practice act that contains its own penalties.

Prohibited Acts:

Similar to MN, prohibited acts are found in two places: in the definition: "Unlicensed health care practices" and in a prohibited acts section.

In the definition: "unlicensed health care practices do not include:" List is similar to SB287 prohibited acts. Additions: setting fractures, any practice included in the practice of dentistry, and practices under 5-37-15 – the practice of religious beliefs - or 5-34-31(6) – nursing in the context of religious beliefs.

There is also a prohibited acts list similar to Minnesota with a few exceptions and goes on and on. Many concern good business practices. Similar to MN language: "Conduct likely to deceive, defraud or harm the public or demonstrating a willful or careless disregard for the health or safety of an unlicensed health care client in which case, proof of actual injury need not be established" also the "inability to engage in ... practices with reasonable safety to ... clients." **SB287: "knowingly and purposely diagnoses and treats a physical or mental health condition of a client under circumstances or conditions that cause or create an imminent or discernable risk of significant bodily harm, serious physical or mental illness or death."**

Prohibited Acts NOT in RI but are in SB287:

There are no provisions prohibiting any procedure puncturing the skin except for fingerprick drawing of blood for screening purposes, Prescribing/administering x-rays, use of devices that require a prescription for use, performing high-velocity, low-amplitude thrust to a joint (like chiropractic)

Disclosure Required: Calls it a health care client bill of rights.

Contains all of the provisions that are in SB287. Contains all of the same information as the Minnesota bill: Includes additional information; that clients have the right to file a complaint and where they can file a complaint, the practitioner's fees, insurance available, and payment policies, that the client has a right to reasonable notice of changes in service or charges, that the client has the right to information concerning treatment plans and duration of service, a statement that the client may expect courteous treatment and be free from verbal, physical or sexual abuse, confidentiality provisions, a statement where they may receive these services elsewhere and choose freely among practitioners, and if there is a change in practitioners, a smooth transition, a statement that the client may refuse services, and no practitioner retaliation toward the client.

What is not in RI but is in SB287: a cultural exemption for traditional cultural healers recognized by their community from providing the written disclosure. Also, reasonable accommodations for those who cannot read.

Current California law - Law enacted in 2002

CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 2050-2079

2053.5. (a) Notwithstanding any other provision of law, a person who complies with the requirements of Section **2053.6** shall not be in violation of Section 2051 or 2052 unless that person does any of the following:

- (1) Conducts surgery or any other procedure on another person that punctures the skin or harmfully invades the body.
 - (2) Administers or prescribes X-ray radiation to another person.
 - (3) Prescribes or administers legend drugs or controlled substances to another person.
 - (4) Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner.
 - (5) Willfully diagnoses and treats a physical or mental condition of any person under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death.
 - (6) Sets fractures.
 - (7) Treats lacerations or abrasions through electrotherapy.
 - (8) Holds out, states, indicates, advertises, or implies to a client or prospective client that he or she is a physician, a surgeon, or a physician and surgeon.
- (b) A person who advertises any services that are not unlawful under Section 2051 or 2052 pursuant to subdivision (a) shall disclose in the advertisement that he or she is not licensed by the state as a healing arts practitioner.

2053.6. (a) A person who provides services pursuant to Section **2053.5** that are not unlawful under Section 2051 or 2052 shall, prior to providing those services, do the following:

- (1) Disclose to the client in a written statement using plain language the following information:
 - (A) That he or she is not a licensed physician.
 - (B) That the treatment is alternative or complementary to healing arts services licensed by the state.
 - (C) That the services to be provided are not licensed by the state.
 - (D) The nature of the services to be provided.
 - (E) The theory of treatment upon which the services are based.
 - (F) His or her educational, training, experience, and other qualifications regarding the services to be provided.
 - (2) Obtain a written acknowledgment from the client stating that he or she has been provided with the information described in paragraph (1). The client shall be provided with a copy of the written acknowledgement, which shall be maintained by the person providing the service for three years.
- (b) The information required by subdivision (a) shall be provided in a language that the client understands.
- (c) Nothing in this section or in Section **2053.5** shall be

construed to do the following:

(1) Affect the scope of practice of licensed physicians and surgeons.

(2) Limit the right of any person to seek relief for negligence or any other civil remedy against a person providing services subject to the requirements of this section.

Notes: Section 2051 & 2052 are referred to in the law. They concern the practice of medicine:

2051 defines the practice of medicine by saying what a doctor can do. 2051. The physician's and surgeon's certificate authorizes the holder to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions.

2052: essentially says that a license is required to practice, and it is illegal to practice without a license

There is an extensive website on how their bill was passed. Essentially they went for the technicality argument: that California law for physicians was so broadly written that anyone doing alternative & complimentary care was practicing medicine without a license and that this technicality needed to be remedied.

- Louisiana -

PART VI-B. DISCLOSURE

§1742.1. Disclosure

A. Any person who provides information or makes recommendations regarding lifestyle modifications, food, dietary supplements, or homeopathic remedies, for a consulting fee, hereinafter referred to as a vendor, but who is not licensed as a health care provider as defined in R.S. 37:1744(A) or a dietitian as defined in R.S. 37:3083 shall, prior to providing such services, disclose to the consumer in a plainly worded statement all of the following:

- (1) The name, business, and telephone number of the vendor.
- (2) The fact that he or she is not licensed, certified, or registered as a health care provider in the state of Louisiana.
- (3) That any food or dietary supplements being recommended are not medically prescribed drugs.
- (4) If applicable, the degree or degrees, training, or credentials of the vendor regarding services provided.

B. Before a vendor provides information or recommendations to a consumer for a fee for the first time, such vendor shall obtain a written acknowledgment from the consumer stating that the consumer has been provided with the information in Subsection A of this Section and such acknowledgment shall be maintained for two years by the vendor. The consumer shall be provided with a copy of this written acknowledgment.

C. The attorney general or the local district attorney in the parish where the violator resides shall mail a certified letter to any vendor who violates this Section advising the vendor that he must immediately begin to disclose to his or her consumers information required in this Section.

D. This Section shall not apply to health care providers who are licensed in the state of Louisiana and who provide information and make recommendations regarding food, dietary supplements, homeopathic remedies or lifestyle modifications for a fee.

E. This Section shall not be interpreted to apply to, control, prevent, or restrict the practice, service, or activity of lawfully marketing, selling, or distributing products such as food, dietary supplements, or homeopathic remedies, educating consumers about such products, or explaining the use of such products.

F. A person providing information or recommendations for a fee who is acting under and in compliance with this Section shall not be in violation of R.S. 37:1271 for providing information or making recommendations regarding lifestyle modifications, food, dietary supplements, or homeopathic remedies.

G. As used in this Part, "lifestyle modifications" means the broad domain of traditional or homeopathic health care practices and other complementary health practices and services provided by a person who is not licensed, certified or registered to perform, and who shall be prohibited from performing any of the following designated services or practices:

- (1) Practicing medicine or performing surgery as defined in R.S. 37:1262.
- (2) Prescribing or administering any procedure involving ionizing radiation.
- (3) Prescribing, dispensing, administering, or recommending the discontinuance of a prescription drug or device.
- (4) Performing an adjustment or manipulation of the articulations of the joints or spine.
- (5) Holding out, stating, indicating, advertising, or otherwise implying he is a health care provider, as defined in R.S. 40:1299.41(A)(1), or a physician, or medical doctor, or in any way licensed to practice medicine pursuant to Part I of Chapter 15 of Title 37 of the Louisiana Revised Statutes of 1950.

H. Nothing in this Part shall be construed as being applicable to a member of the clergy or

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religious non-medical care vendor.

Acts 2005, No. 334, §1; Acts 2006, No. 655, §1; Acts 2008, No. 524, §1.

Minnesota Law 2006

Minnesota Statutes 2006 Chapter 146A. Complementary And Alternative Health Care Practices

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146A.001 APPLICATION OF LAWS 2005, CHAPTER 56, TERMINOLOGY CHANGES.

State agencies shall use the terminology changes specified in Laws 2005, chapter 56, section 1, when printed material and signage are replaced and new printed material and signage are obtained. State agencies do not have to replace existing printed material and signage to comply with Laws 2005, chapter 56, sections 1 and 2. Language changes made according to Laws 2005,

chapter 56, sections 1 and 2, shall not expand or exclude eligibility to services.

History: 2005 c 56 s 3

146A.01 DEFINITIONS.

Subdivision 1. **Terms.** As used in this chapter, the following terms have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of health or the commissioner's designee.

Subd. 3. **Complementary and alternative health care client.** "Complementary and alternative health care client" means an individual who receives services from an unlicensed complementary and alternative health care practitioner.

Subd. 4. **Complementary and alternative health care practices.** (a) "Complementary and alternative health care practices" means the broad domain of complementary and alternative healing methods and treatments, including but not limited to: (1) acupressure; (2) anthroposophy; (3) aroma therapy; (4) ayurveda; (5) cranial sacral therapy; (6) culturally traditional healing practices; (7) detoxification practices and therapies; (8) energetic healing; (9) polarity therapy; (10) folk practices; (11) healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light; (12) Gerson therapy and colostrum therapy; (13) healing touch; (14) herbology or herbalism; (15) homeopathy; (16) nondiagnostic iridology; (17) body work, massage, and massage therapy; (18) meditation; (19) mind-body healing practices; (20) naturopathy; (21) noninvasive instrumentalities; and (22) traditional Oriental practices, such as Qi Gong energy healing.

(b) Complementary and alternative health care practices do not include surgery, x-ray radiation, administering or dispensing legend drugs and controlled substances, practices that invade the human body by puncture of the skin, setting fractures, the use of medical devices as defined in section 147A.01, any practice included in the practice of dentistry as defined in section 150A.05, subdivision 1, or the manipulation or adjustment of articulations of joints or the spine as described in section 146.23 or 148.01.

(c) Complementary and alternative health care practices do not include practices that are permitted under section 147.09, clause (11), or 148.271, clause (5).

(d) This chapter does not apply to, control, prevent, or restrict the practice, service, or activity of lawfully marketing or distributing food products, including dietary supplements as defined in the federal Dietary Supplement Health and Education Act, educating customers about such products, or explaining the uses of such products. Under Minnesota law, an unlicensed complementary and alternative health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments.

Subd. 5. **Office of Unlicensed Complementary and Alternative Health Care Practice or**

office. "Office of Unlicensed Complementary and Alternative Health Care Practice" or "office" means the Office of Unlicensed Complementary and Alternative Health Care Practice established in section 146A.02.

Subd. 6. Unlicensed complementary and alternative health care practitioner. (a)

"Unlicensed complementary and alternative health care practitioner" means a person who:

(1) either:

(i) is not licensed or registered by a health-related licensing board or the commissioner of health; or

(ii) is licensed or registered by the commissioner of health or a health-related licensing board other than the Board of Medical Practice, the Board of Dentistry, the Board of Chiropractic Examiners, or the Board of Podiatric Medicine, but does not hold oneself out to the public as being licensed or registered by the commissioner or a health-related licensing board when engaging in complementary and alternative health care;

(2) has not had a license or registration issued by a health-related licensing board or the commissioner of health revoked or has not been disciplined in any manner at any time in the past, unless the right to engage in complementary and alternative health care practices has been established by order of the commissioner of health;

(3) is engaging in complementary and alternative health care practices; and

(4) is providing complementary and alternative health care services for remuneration or is holding oneself out to the public as a practitioner of complementary and alternative health care practices.

(b) A health care practitioner licensed or registered by the commissioner or a health-related licensing board, who engages in complementary and alternative health care while practicing under the practitioner's license or registration, shall be regulated by and be under the jurisdiction of the applicable health-related licensing board with regard to the complementary and alternative health care practices.

History: 2000 c 460 s 9

146A.02 OFFICE OF UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICE.

Subdivision 1. **Creation.** The Office of Unlicensed Complementary and Alternative Health Care Practice is created in the Department of Health to investigate complaints and take and enforce disciplinary actions against all unlicensed complementary and alternative health care practitioners for violations of prohibited conduct, as defined in section 146A.08. The office shall also serve as a clearinghouse on complementary and alternative health care practices and unlicensed complementary and alternative health care practitioners through the dissemination of objective information to consumers and through the development and performance of public

education activities, including outreach, regarding the provision of complementary and alternative health care practices and unlicensed complementary and alternative health care practitioners who provide these services.

Subd. 2. **Rulemaking.** The commissioner shall adopt rules necessary to implement, administer, or enforce provisions of this chapter pursuant to chapter 14.

History: 2000 c 460 s 10

146A.025 MALTREATMENT OF MINORS.

Nothing in this chapter shall restrict the ability of a local welfare agency, local law enforcement agency, the commissioner of human services, or the state to take action regarding the maltreatment of minors under section 609.378 or 626.556. A parent who obtains complementary and alternative health care for the parent's minor child is not relieved of the duty to seek necessary

medical care consistent with the requirements of sections 609.378 and 626.556. A complementary or alternative health care practitioner who is providing services to a child who is not receiving necessary medical care must make a report under section 626.556. A complementary or alternative

health care provider is a mandated reporter under section 626.556, subdivision 3.

History: 2000 c 460 s 11

146A.03 REPORTING OBLIGATIONS.

Subdivision 1. **Permission to report.** A person who has knowledge of any conduct constituting grounds for disciplinary action relating to complementary and alternative health care practices under this chapter may report the violation to the office.

Subd. 2. **Institutions.** A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the office any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an unlicensed complementary and alternative health care practitioner's privilege to practice or treat complementary and alternative health care clients in the institution or, as part of the organization, any denial of privileges or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the office under this chapter. The institution, organization, or governmental entity shall also report the resignation of any unlicensed complementary and alternative health care practitioners prior to the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter or prior to the commencement of formal charges but after the practitioner had

knowledge that formal charges were contemplated or were being prepared.

Subd. 3. **Professional societies.** A state or local professional society for unlicensed complementary and alternative health care practitioners shall report to the office any termination, revocation, or suspension of membership or any other disciplinary action taken against an unlicensed complementary and alternative health care practitioner. If the society has received a complaint that might be grounds for discipline under this chapter against a member on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the office.

Subd. 4. **Licensed professionals.** A licensed health professional shall report to the office personal knowledge of any conduct that the licensed health professional reasonably believes constitutes grounds for disciplinary action under this chapter by any unlicensed complementary and alternative health care practitioner, including conduct indicating that the individual may be incompetent or may be mentally or physically unable to engage safely in the provision of services. If the information was obtained in the course of a client relationship, the client is an unlicensed complementary and alternative health care practitioner, and the treating individual successfully counsels the other practitioner to limit or withdraw from practice to the extent required by the impairment, the office may deem this limitation of or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. **Insurers.** Four times each year as prescribed by the commissioner, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to unlicensed complementary and alternative health care practitioners or the medical Joint Underwriting Association under chapter 62F shall submit to the office a report concerning the unlicensed complementary and alternative health care practitioners against whom malpractice settlements or awards have been made. The response must contain at least the following information:

- (1) the total number of malpractice settlements or awards made;
- (2) the date the malpractice settlements or awards were made;
- (3) the allegations contained in the claim or complaint leading to the settlements or awards made;
- (4) the dollar amount of each malpractice settlement or award;
- (5) the regular address of the practice of the unlicensed complementary and alternative health care practitioner against whom an award was made or with whom a settlement was made; and
- (6) the name of the unlicensed complementary and alternative health care practitioner against whom an award was made or with whom a settlement was made.

The insurance company shall, in addition to the above information, submit to the office any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that an unlicensed complementary and alternative health care practitioner may have engaged in conduct violating this chapter.

Subd. 6. **Courts.** The court administrator of district court or any other court of competent jurisdiction shall report to the office any judgment or other determination of the court that adjudges or includes a finding that an unlicensed complementary and alternative health care practitioner is mentally ill, mentally incompetent, guilty of a felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the unlicensed complementary and alternative health care practitioner under sections 524.5-101 to 524.5-502 or commits an unlicensed complementary and alternative health care practitioner under chapter 253B.

Subd. 7. **Self-reporting.** An unlicensed complementary and alternative health care practitioner shall report to the office any personal action that would require that a report be filed with the office by any person, health care facility, business, or organization pursuant to subdivisions 2 to 5. The practitioner shall also report the revocation, suspension, restriction, limitation, or other disciplinary action against the practitioner's license, certificate, registration, or right of practice in another state or jurisdiction for offenses that would be subject to disciplinary action in this state and also report the filing of charges regarding the practitioner's license, certificate, registration, or right of practice in another state or jurisdiction.

Subd. 8. **Deadlines; forms.** Reports required by subdivisions 2 to 7 must be submitted not later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The office may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to ensure prompt and accurate reporting.

History: 2000 c 460 s 12; 2004 c 146 art 3 s 47

146A.04 IMMUNITY.

Subdivision 1. **Reporting.** Any person, other than the unlicensed complementary and alternative health care practitioner who committed the violation, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report to the office, for otherwise reporting to the office violations or alleged violations of this chapter, or for cooperating with an investigation of a report, except as provided in this subdivision. Any person who knowingly or recklessly makes a false report is liable in a civil suit for any damages suffered by the person or persons so reported and for any punitive damages set by the court or jury. An action requires clear and convincing evidence that the defendant made the statement with knowledge of falsity or with reckless disregard for its truth or falsity. The report or statement or any statement made in cooperation with an investigation or as part of a disciplinary proceeding is

privileged except in an action brought under this subdivision.

Subd. 2. **Investigation.** The commissioner and employees of the Department of Health and other persons engaged in the investigation of violations and in the preparation, presentation, and management of and testimony pertaining to charges of violations of this chapter are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.

History: 2000 c 460 s 13

146A.05 DISCIPLINARY RECORD ON JUDICIAL REVIEW.

Upon judicial review of any disciplinary action taken by the commissioner under this chapter, the reviewing court shall seal the portions of the administrative record that contain data on a complementary and alternative health care client or a complainant under section 146A.03, and shall not make those portions of the administrative record available to the public.

History: 2000 c 460 s 14

146A.06 PROFESSIONAL COOPERATION; UNLICENSED PRACTITIONER.

Subdivision 1. **Cooperation.** An unlicensed complementary and alternative health care practitioner who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the office, shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the office relating to the subject of the investigation, whether tape recorded or not; providing copies of client records, as reasonably requested by the office, to assist the office in its investigation; and appearing at conferences or hearings scheduled by the commissioner. If the office does not have a written consent from a client permitting access to the client's records, the unlicensed complementary and alternative health care practitioner shall delete in the record any data that identifies the client before providing it to the office. If an unlicensed complementary and alternative health care practitioner refuses to give testimony or produce any documents, books, records, or correspondence on the basis of the fifth amendment to the Constitution of the United States, the commissioner may compel the unlicensed complementary and alternative health care practitioner to provide the testimony or information; however, the testimony or evidence may not be used against the practitioner in any criminal proceeding. Challenges to requests of the office may be brought before the appropriate agency or court.

Subd. 2. **Data.** (a) Data relating to investigations of complaints and disciplinary actions involving unlicensed complementary and alternative health care practitioners are governed by this subdivision and section 13.41 does not apply. Except as provided in section 13.39, subdivision 2, and paragraph (b), data relating to investigations of complaints and disciplinary actions involving

unlicensed complementary and alternative health care practitioners are public data, regardless of the outcome of any investigation, action, or proceeding.

(b) The following data are private data on individuals, as defined in section 13.02:

- (1) data on a complementary and alternative health care client;
- (2) data on a complainant under section 146A.03; and
- (3) data on the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action.

Subd. 3. **Exchanging information.** (a) The office shall establish internal operating procedures for:

- (1) exchanging information with state boards; agencies, including the Office of Ombudsman for Mental Health and Developmental Disabilities; health-related and law enforcement facilities; departments responsible for licensing health-related occupations, facilities, and programs; and law enforcement personnel in this and other states; and
- (2) coordinating investigations involving matters within the jurisdiction of more than one regulatory agency.

(b) The procedures for exchanging information must provide for the forwarding to the entities described in paragraph (a), clause (1), of information and evidence, including the results of investigations, that are relevant to matters within the regulatory jurisdiction of the organizations

in paragraph (a). The data have the same classification in the hands of the agency receiving the data as they have in the hands of the agency providing the data.

(c) The office shall establish procedures for exchanging information with other states regarding disciplinary action against unlicensed complementary and alternative health care practitioners.

(d) The office shall forward to another governmental agency any complaints received by the office that do not relate to the office's jurisdiction but that relate to matters within the jurisdiction of the other governmental agency. The agency to which a complaint is forwarded shall advise the office of the disposition of the complaint. A complaint or other information received by another governmental agency relating to a statute or rule that the office is empowered to enforce must be forwarded to the office to be processed in accordance with this section.

(e) The office shall furnish to a person who made a complaint a description of the actions of the office relating to the complaint.

History: 2000 c 460 s 15; 2005 c 56 s 1

146A.07 PROFESSIONAL ACCOUNTABILITY.

The office shall maintain and keep current a file containing the reports and complaints filed against unlicensed complementary and alternative health care practitioners within the

commissioner's jurisdiction. Each complaint filed with the office must be investigated. If the files maintained by the office show that a malpractice settlement or award has been made against an unlicensed complementary and alternative health care practitioner, as reported by insurers under section 146A.03, subdivision 5, the commissioner may authorize a review of the practitioner's practice by the staff of the office.

History: 2000 c 460 s 16

146A.08 PROHIBITED CONDUCT.

Subdivision 1. **Prohibited conduct.** The commissioner may impose disciplinary action as described in section 146A.09 against any unlicensed complementary and alternative health care practitioner. The following conduct is prohibited and is grounds for disciplinary action:

- (a) Conviction of a crime, including a finding or verdict of guilt, an admission of guilt, or a no-contest plea, in any court in Minnesota or any other jurisdiction in the United States, reasonably related to engaging in complementary and alternative health care practices. Conviction, as used in this subdivision, includes a conviction of an offense which, if committed in this state, would be deemed a felony, gross misdemeanor, or misdemeanor, without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered.
- (b) Conviction of any crime against a person. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.2242; 609.23; 609.231; 609.2325; 609.233; 609.2335; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, subdivision 1, clause (1); 609.561; 609.562; 609.595; and 609.72, subdivision 3.
- (c) Failure to comply with the self-reporting requirements of section 146A.03, subdivision 7.
- (d) Engaging in sexual contact with a complementary and alternative health care client or former client, engaging in contact that may be reasonably interpreted by a client as sexual, engaging in any verbal behavior that is seductive or sexually demeaning to the patient, or engaging in sexual exploitation of a client or former client. For purposes of this paragraph, "former client" means a person who has obtained services from the unlicensed complementary and alternative health care practitioner within the past two years.
- (e) Advertising that is false, fraudulent, deceptive, or misleading.
- (f) Conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a complementary and alternative health care client; or any other practice that may create danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established.
- (g) Adjudication as mentally incompetent or as a person who is dangerous to self or

adjudication pursuant to chapter 253B as chemically dependent, mentally ill, developmentally disabled, mentally ill and dangerous to the public, or as a sexual psychopathic personality or sexually dangerous person.

- (h) Inability to engage in complementary and alternative health care practices with reasonable safety to complementary and alternative health care clients.
- (i) The habitual overindulgence in the use of or the dependence on intoxicating liquors.
- (j) Improper or unauthorized personal or other use of any legend drugs as defined in chapter 151, any chemicals as defined in chapter 151, or any controlled substance as defined in chapter 152.
- (k) Revealing a communication from, or relating to, a complementary and alternative health care client except when otherwise required or permitted by law.
- (l) Failure to comply with a complementary and alternative health care client's request made under section 144.335 or to furnish a complementary and alternative health care client record or report required by law.
- (m) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the complementary and alternative health care client.
- (n) Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws.
- (o) Failure to make reports as required by section 146A.03 or cooperate with an investigation of the office.
- (p) Obtaining money, property, or services from a complementary and alternative health care client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud.
- (q) Undertaking or continuing a professional relationship with a complementary and alternative health care client in which the objectivity of the unlicensed complementary and alternative health care practitioner would be impaired.
- (r) Failure to provide a complementary and alternative health care client with a copy of the client bill of rights or violation of any provision of the client bill of rights.
- (s) Violating any order issued by the commissioner.
- (t) Failure to comply with any provision of sections 146A.01 to 146A.11 and the rules adopted under those sections.
- (u) Failure to comply with any additional disciplinary grounds established by the commissioner by rule.
- (v) Revocation, suspension, restriction, limitation, or other disciplinary action against any health care license, certificate, registration, or right to practice of the unlicensed complementary and alternative health care practitioner in this or another state or jurisdiction for offenses that would be subject to disciplinary action in this state or failure to report to the office that charges

regarding the practitioner's license, certificate, registration, or right of practice have been brought in this or another state or jurisdiction.

(w) Use of the title "doctor," "Dr.," or "physician" alone or in combination with any other words, letters, or insignia to describe the complementary and alternative health care practices the practitioner provides.

(x) Failure to provide a complementary and alternative health care client with a recommendation that the client see a health care provider who is licensed or registered by a health-related licensing board or the commissioner of health, if there is a reasonable likelihood that the client needs to be seen by a licensed or registered health care provider.

Subd. 2. **Less customary approach.** The fact that a complementary and alternative health care practice may be a less customary approach to health care shall not constitute the basis of a disciplinary action per se.

Subd. 3. **Evidence.** In disciplinary actions alleging a violation of subdivision 1, paragraph (a), (b), (c), or (g), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the same is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

Subd. 4. **Examination; access to medical data.** (a) If the commissioner has probable cause to believe that an unlicensed complementary and alternative health care practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j), the commissioner may issue an order directing the practitioner to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, every unlicensed complementary and alternative health care practitioner is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the commissioner and further to have waived all objections to the admissibility of the testimony or examination reports of the health care provider performing the examination or evaluation on the grounds that the same constitute a privileged communication. Failure of an unlicensed complementary and alternative health care practitioner to submit to an examination or evaluation when ordered, unless the failure was due to circumstances beyond the practitioner's control, constitutes an admission that the unlicensed complementary and alternative health care practitioner violated subdivision 1, paragraph (g), (h), (i), or (j), based on the factual specifications

in the examination or evaluation order and may result in a default and final disciplinary order being entered after a contested case hearing. An unlicensed complementary and alternative health care practitioner affected under this paragraph shall at reasonable intervals be given an opportunity

to demonstrate that the practitioner can resume the provision of complementary and alternative health care practices with reasonable safety to clients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the commissioner shall be used

against

an unlicensed complementary and alternative health care practitioner in any other proceeding.

(b) In addition to ordering a physical or mental examination or chemical dependency evaluation, the commissioner may, notwithstanding section 13.384; 144.651; 595.02; or any other law limiting access to medical or other health data, obtain medical data and health records relating to an unlicensed complementary and alternative health care practitioner without the practitioner's consent if the commissioner has probable cause to believe that a practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j). The medical data may be requested from a provider as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the Department of Human Services. A provider, insurance company, or government agency shall comply with any written request of the commissioner under this subdivision and is not liable in any action for damages for releasing the data requested by the commissioner if the data are released pursuant to a written request under this subdivision, unless the information is false and the person or organization giving the information knew or had reason to believe the information was false. Information obtained under this subdivision is private data under section 13.41.

History: 1999 c 227 s 22; 2000 c 460 s 17; 2005 c 56 s 1

146A.09 DISCIPLINARY ACTIONS.

Subdivision 1. **Forms of disciplinary action.** When the commissioner finds that an unlicensed complementary and alternative health care practitioner has violated any provision of this chapter, the commissioner may take one or more of the following actions, only against the individual practitioner:

- (1) revoke the right to practice;
- (2) suspend the right to practice;
- (3) impose limitations or conditions on the practitioner's provision of complementary and alternative health care practices, impose rehabilitation requirements, or require practice under supervision;
- (4) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the practitioner of any economic advantage gained by reason of the violation charged or to reimburse the office for all costs of the investigation and proceeding;
- (5) censure or reprimand the practitioner;
- (6) impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the Office of Administrative Hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the staff of the Office of

Unlicensed Complementary and Alternative Health Care Practice; or
(7) any other action justified by the case.

Subd. 2. **Discovery; subpoenas.** In all matters relating to the lawful activities of the office, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the commissioner or by a subpoena of the commissioner to do so may, upon application to the district court in any district, be ordered to comply with the order or subpoena. The commissioner may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 3. **Hearings.** If the commissioner proposes to take action against the practitioner as described in subdivision 1, the commissioner must first notify the practitioner against whom the action is proposed to be taken and provide the practitioner with an opportunity to request a hearing under the contested case provisions of chapter 14. If the practitioner does not request a hearing by notifying the commissioner within 30 days after service of the notice of the proposed action, the commissioner may proceed with the action without a hearing.

Subd. 4. **Reinstatement.** The commissioner may at the commissioner's discretion reinstate the right to practice and may impose any disciplinary measure listed under subdivision 1.

Subd. 5. **Temporary suspension.** In addition to any other remedy provided by law, the commissioner may, acting through a person to whom the commissioner has delegated this authority and without a hearing, temporarily suspend the right of an unlicensed complementary and alternative health care practitioner to practice if the commissioner's delegate finds that the practitioner has violated a statute or rule that the commissioner is empowered to enforce and continued practice by the practitioner would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the commissioner issues a final order in the matter after a hearing or upon agreement between the commissioner and the practitioner. Service of the order is effective if the order is served on the practitioner or counsel of record personally or by first class mail. Within ten days of service of the order, the commissioner shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the office or practitioner shall be in affidavit form only. The practitioner or the counsel of record may appear for oral argument. Within five working days after the hearing, the commissioner shall issue the commissioner's order and, if the suspension is continued,

schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The commissioner shall issue a final order within 30 days after receipt of that report.

Subd. 6. **Automatic suspension.** The right of an unlicensed complementary and alternative health care practitioner to practice is automatically suspended if (1) a guardian of an unlicensed complementary and alternative health care practitioner is appointed by order of a court under sections 524.5-101 to 524.5-502, or (2) the practitioner is committed by order of a court pursuant to chapter 253B. The right to practice remains suspended until the practitioner is restored to capacity by a court and, upon petition by the practitioner, the suspension is terminated by the commissioner after a hearing or upon agreement between the commissioner and the practitioner.

Subd. 7. **Licensed or regulated practitioners.** If a practitioner investigated under this section is licensed or registered by the commissioner of health or a health-related licensing board, is subject to the jurisdiction of the commissioner under section 146A.01, subdivision 6, paragraph (a), clause (1), item (ii), and the commissioner determines that the practitioner has violated any provision of this chapter, the commissioner, in addition to taking disciplinary action under this section:

- (1) may, if the practitioner is licensed or regulated in another capacity by the commissioner, take further disciplinary action against the practitioner in that capacity; or
- (2) shall, if the practitioner is licensed or registered in another capacity by a health-related licensing board, report the commissioner's findings under this section, and may make a nonbinding recommendation that the board take further action against the practitioner in that capacity.

History: 2000 c 460 s 18; 2004 c 146 art 3 s 47

146A.10 ADDITIONAL REMEDIES.

Subdivision 1. **Cease and desist.** (a) The commissioner may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the office has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62.

If,

within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the commissioner and is not reviewable by a court or agency.

(b) A hearing must be initiated by the office not later than 30 days from the date of the office's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, the commissioner shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the commissioner.

(c) When a request for a stay accompanies a timely hearing request, the commissioner may, in the commissioner's discretion, grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the Office of Administrative Hearings within three working days of receipt of the request. Within ten days after receiving the request from the commissioner, an administrative law judge shall issue a recommendation to grant or deny the stay.

The commissioner shall grant or deny the stay within five days of receiving the administrative law judge's recommendation.

(d) In the event of noncompliance with a cease and desist order, the commissioner may institute a proceeding in Hennepin County District Court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the office not exceeding \$10,000 for each separate violation.

Subd. 2. Injunctive relief. In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the commissioner may in the commissioner's own name bring an action in Hennepin County District Court for injunctive relief to restrain an unlicensed complementary and alternative health care practitioner from a violation or threatened violation of any statute, rule, or order which the commissioner is empowered to regulate, enforce, or issue. A temporary restraining order must be granted in the proceeding if continued activity by a practitioner would create a serious risk of harm to others. The commissioner need not show irreparable harm.

Subd. 3. Additional powers. The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a practitioner from criminal prosecution by a competent authority or from disciplinary action by the commissioner.

History: 2000 c 460 s 19

146A.11 COMPLEMENTARY AND ALTERNATIVE HEALTH CARE CLIENT BILL OF RIGHTS.

Subdivision 1. Scope. All unlicensed complementary and alternative health care practitioners shall provide to each complementary and alternative health care client prior to providing treatment

a written copy of the complementary and alternative health care client bill of rights. A copy must also be posted in a prominent location in the office of the unlicensed complementary and alternative health care practitioner. Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak English. The complementary and alternative health care client bill of rights shall include the following:

(1) the name, complementary and alternative health care title, business address, and telephone number of the unlicensed complementary and alternative health care practitioner;
(2) the degrees, training, experience, or other qualifications of the practitioner regarding the complementary and alternative health care being provided, followed by the following statement in bold print:

"THE STATE OF MINNESOTA HAS NOT ADOPTED ANY EDUCATIONAL AND TRAINING STANDARDS FOR UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATION PURPOSES ONLY.

Under Minnesota law, an unlicensed complementary and alternative health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments. If a client desires a diagnosis from a licensed physician, chiropractor, or acupuncture practitioner, or services from a physician, chiropractor, nurse, osteopath, physical therapist, dietitian, nutritionist, acupuncture practitioner, athletic trainer, or any other type of health care provider, the client may seek such services at any time.";

- (3) the name, business address, and telephone number of the practitioner's supervisor, if any;
- (4) notice that a complementary and alternative health care client has the right to file a complaint with the practitioner's supervisor, if any, and the procedure for filing complaints;
- (5) the name, address, and telephone number of the office of unlicensed complementary and alternative health care practice and notice that a client may file complaints with the office;
- (6) the practitioner's fees per unit of service, the practitioner's method of billing for such fees, the names of any insurance companies that have agreed to reimburse the practitioner, or health maintenance organizations with whom the practitioner contracts to provide service, whether the practitioner accepts Medicare, medical assistance, or general assistance medical care, and whether the practitioner is willing to accept partial payment, or to waive payment, and in what circumstances;
- (7) a statement that the client has a right to reasonable notice of changes in services or charges;
- (8) a brief summary, in plain language, of the theoretical approach used by the practitioner in providing services to clients;
- (9) notice that the client has a right to complete and current information concerning the practitioner's assessment and recommended service that is to be provided, including the expected duration of the service to be provided;
- (10) a statement that clients may expect courteous treatment and to be free from verbal, physical, or sexual abuse by the practitioner;
- (11) a statement that client records and transactions with the practitioner are confidential, unless release of these records is authorized in writing by the client, or otherwise provided by law;

(12) a statement of the client's right to be allowed access to records and written information from records in accordance with section 144.335;

(13) a statement that other services may be available in the community, including where information concerning services is available;

(14) a statement that the client has the right to choose freely among available practitioners and to change practitioners after services have begun, within the limits of health insurance, medical assistance, or other health programs;

(15) a statement that the client has a right to coordinated transfer when there will be a change in the provider of services;

(16) a statement that the client may refuse services or treatment, unless otherwise provided by law; and

(17) a statement that the client may assert the client's rights without retaliation.

Subd. 2. **Acknowledgment by client.** Prior to the provision of any service, a complementary and alternative health care client must sign a written statement attesting that the client has received the complementary and alternative health care client bill of rights.

History: 2000 c 460 s 20

Rhode Island:

TITLE 23

Health and Safety

CHAPTER 23-74

Unlicensed Health Care Practices

SECTION 23-74-1

§ 23-74-1 Definitions and applicability. – (a) As used in this chapter, the following terms have the following meanings:

(1) "Director" or "director of health" means the director of the department of health or the director's designee;

(2) "Unlicensed health care client" means an individual who receives services from an unlicensed health care practitioner;

(3) "Unlicensed health care practices" means the broad domain of unlicensed healing methods and treatments, including, but not limited to: (i) acupressure; (ii) Alexander technique; (iii) aroma therapy; (iv) ayurveda; (v) cranial sacral therapy; (vi) crystal therapy; (vii) detoxification practices and therapies; (viii) energetic healing; (ix) rolfing; (x) Gerson therapy and colostrum therapy; (xi) therapeutic touch; (xii) herbology or herbalism; (xiii) polarity therapy; (xiv) homeopathy; (xv) nondiagnostic iridology; (xvi) body work; (xvii) reiki; (xviii) mind-body healing practices; (ixx) naturopathy; and (xx) Qi Gong energy healing. "Unlicensed health care practices" do not include surgery, x-ray radiation, prescribing, administering, or dispensing legend drugs and controlled substances, practices that invade the human body by puncture of the skin, setting fractures, any practice included in the practice of dentistry, the manipulation or adjustment of articulations of joints, or the spine, also known as chiropractic medicine as defined in chapter 30 of title 5, the healing art of acupuncture as defined in chapter 37.2 of title 5, or practices that are permitted under § 5-37-15 or § 5-34-31(6).

(4) "Unlicensed health care practitioner" means a person who:

(i) Is not licensed by a health-related licensing board or the director of health; or holds a license issued by a health-related licensing board or the department of health in this state, but does not hold oneself out to the public as being licensed or registered by the director or a health-related licensing board when engaging in unlicensed health care;

(ii) Has not had a license issued by a health-related licensing board or the director of health revoked or suspended without reinstatement unless the right to engage in unlicensed health care practices has been established by order of the director of health;

(iii) Is engaging in unlicensed health care practices; and

(iv) Is providing unlicensed health care services for remuneration or is holding oneself out to the public as a practitioner of unlicensed health care practices.

(b) This chapter does not apply to, control, prevent, or restrict the practice, service, or activity of lawfully marketing or distributing food products, including dietary supplements as defined in the federal Dietary Supplement Health and Education Act [see 21 U.S.C. § 321(ff)], educating customers about those products, or explaining the uses of those products. Under Rhode Island law, an unlicensed health care practitioner may not provide a medical diagnosis.

(c) A health care practitioner, licensed or registered by the director or a health-related licensing board, who engages in unlicensed health care while practicing under the practitioner's license or registration, shall be regulated by and be under the jurisdiction of the applicable health-related licensing board with regard to the unlicensed health care practices.

(d) Subject to the provisions of this chapter, persons in Rhode Island are authorized to practice as unlicensed health care practitioners and receive remuneration for their services.

§ 23-74-2 Maltreatment of minors prohibited. – Nothing in this chapter shall restrict the ability of a local law enforcement agency or the director of the department of children, youth and families to take action regarding the maltreatment of minors. A parent who obtains unlicensed health care for the parent's minor child is not relieved of the duty to seek necessary medical care consistent with the requirements of the general laws. A complementary or alternative health care practitioner who is providing services to a child shall be subject to the reporting provisions of chapter 11 of title 40, entitled "Abused and Neglected Children."

§ 23-74-3 Professional accountability. – The department shall maintain and keep current a file containing the reports and complaints filed against unlicensed health care practitioners within the director's jurisdiction. Each complaint filed with the department must be investigated.

§ 23-74-4 Prohibited conduct. – The director may impose disciplinary action as described in this chapter against any unlicensed health care practitioner. The following conduct is prohibited and is grounds for disciplinary action: